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EXAMINER

MARKOFF, ALEXANDER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte MATHIAS HERRMANN

Appeal 2015-006734
Application 12/739,962
Technology Center 1700

Before MARK NAGUMO, MONTÉ T. SQUIRE, and BRIAN D. RANGE,
Administrative Patent Judges.

RANGE, *Administrative Patent Judge.*

DECISION ON APPEAL

SUMMARY

Appellant¹ appeals under 35 U.S.C. § 134(a) from the Examiner's decision rejecting claims 13–21, 23–26, 35, 36, and 40–42. We have jurisdiction. 35 U.S.C. § 6(b).

We REVERSE.

¹ According to the Appellant, the real party in interest is BSH Bosch und Siemens Hausgeräte GmbH. Appeal Br. 3.

STATEMENT OF THE CASE

Appellant describes the invention as relating to a domestic appliance (for example, a dishwasher) having a control device that supplies measured volumes of water for a wash program and aggregates total water used so that wear on the dishwasher can be measured. Appeal Br. 3; Spec. ¶¶ 10–11. Claims 13 and 21, reproduced below with emphases added to certain key recitations, are the independent claims on appeal and are illustrative of the claimed subject matter:

13. A method for operating a water-bearing domestic appliance, comprising:
 - a. controlling a water feed system by an electronic control device;
 - b. supplying, via the water feed system, specific volumes of water to a treatment chamber of the water-bearing domestic appliance for each wash program or program step to be performed;
 - c. **recording the specific volumes of water being supplied to the treatment chamber of the water-bearing domestic appliance for each wash program** or program step being performed using an individual water volume recording device, wherein the individual water volume recording device is in communication with the electronic control device;
 - d. performing one or more wash programs or program steps controlled by the electronic control device; and
 - e. **aggregating a total water volume using an electronic total water recording device integrated with the electronic control device, wherein the total water volume is an aggregate of the specific volumes of water recorded by the individual water volume recording device including all water supplied to the treatment chamber of the waterbearing domestic appliance, via the water feed system, from each wash program or**

program step performed during a lifetime of the water-bearing domestic appliance.

21. A water-bearing domestic appliance, comprising:
 - a. an electronic control device;
 - b. an individual water volume recording device in communication with the electronic control device to record specific volumes of water being supplied to the treatment chamber of the water-bearing domestic appliance for each wash program or program step being performed;
 - c. a water feed system controlled by the electronic control device to supply the specific volumes of water to the treatment chamber of the water-bearing domestic appliance for each wash program or program step being performed;
 - d. a wash program controlled by the electronic control device, the wash program programmed to conduct one or more program steps; and
 - e. **an electronic total water volume recording device, integrated with the electronic control device, wherein the total water volume recording device aggregates a total of the specific volumes of water recorded by the individual water volume recording device including all water supplied via the water feed system to the treatment chamber of the water-bearing domestic appliance from each wash program or program step performed during a lifetime of the water-bearing domestic appliance.**

Appeal Br.² 17–19 (Claims App’x).

REFERENCES

The Examiner relies upon the prior art below in rejecting the claims on appeal:

Johnson et al.

US 4,119,116

Oct. 10, 1978

² In this decision, we refer to the Final Office Action mailed September 17, 2014 (“Final Act.”), the Appeal Brief filed January 9, 2015 (“Appeal Br.”), the Examiner’s Answer mailed June 8, 2015 (“Ans.”), and the Reply Brief filed July 7, 2015 (“Reply Br.”).

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(hereinafter “Johnson”)

Nogi et al.	US 4,641,671	Feb. 10, 1987
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(hereinafter “Nogi”)

Santarossa et al.	US 5,409,023	Apr. 25, 1995
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(hereinafter “Santarossa”)

Astle et al.	US 2006/0060512 A1	Mar. 23, 2006
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(hereinafter “Astle”)

Hettenhausen	DE 019749636 A1	Nov. 11, 1997
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Jerg et al.	GB 2258306 A	Feb. 3, 1993
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(hereinafter “Jerg”)

REJECTIONS

The Examiner has withdrawn the rejection of claims 21, 23–26, and 35–42 under 35 U.S.C. 112 as failing to comply with the written description requirement. Ans. 6.

The Examiner maintains the following rejections on appeal:

Rejection 1. Claims 13–16, 18, 20, 21, 23, 24, 26, 35, 36, and 40 under 35 U.S.C. § 102 as anticipated by Astle. Final Act. 4.

Rejection 2. Claims 13–17, 19–21, 23–26, 35, and 40 under 35 U.S.C. § 102 as anticipated by as anticipated by Hettenhausen. *Id.* at 5.

Rejection 3. Claims 36, 41, and 42 under 35 U.S.C. § 103 as obvious over Hettenhausen in view of Santarossa, Nogi, Johnson, and Jerg. *Id.* at 6.

Rejection 4. Claims 41 and 42 under 35 U.S.C. § 103 as obvious over Astle in view of Nogi, Johnson, and Jerg. *Id.* at 7.

ANALYSIS

Rejections 1 and 4. The Examiner rejects claims 13–16, 18, 20, 21, 23, 24, 26, 35, 36, and 40 as anticipated by Astle and rejects claims 41 and 42 as obvious over Astle in view of Nogi, Johnson, and Jerg. Final Act. 4, 7. A reference is anticipatory if it “disclose[s] each and every element of the claimed invention, whether it does so explicitly or inherently.” *In re Gleave*,

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560 F.3d 1331, 1334 (Fed. Cir. 2009) (citation omitted). The elements “must be arranged or combined in the same way as in the claim.” *Id.* (internal quotes and citation omitted).

Appellant argues that Astle does not teach “performing one or more wash programs or program steps controlled by the electronic device” as recited in claim 13 and, similarly, does not teach “a wash program controlled by the electronic control device, the wash program programmed to conduct one or more program steps” as recited in claim 21. Appeal Br. 11. In response to this argument, the Examiner finds that Astle teaches that its system “is a detergent dispensing system for washing machine” and finds that “Astle et al[.] teach at least providing an alarm to remind a user and controlling dispensing of the detergent into the washing machine.” Ans. 8 (citing Astle ¶¶ 86–87). Thus, in addressing this recitation, it appears that the Examiner equates either the washing machine or detergent dispenser of Astle (as described at Astle paragraphs 86 and 87) to the “water-bearing domestic appliance” which has a “chamber” in claims 13 and 21.

Appellant also argues that Astle lacks an individual water volume recording device and electronic total water volume recording device as required by claim 13. Appeal Br. 10; Reply Br. 5. Similarly, claim 21 requires “an electronic total water volume recording device” which aggregates water supplied “via the water feed system to the treatment chamber . . . during a lifetime of the water-bearing domestic appliance.” Appeal Br. 19 (Claims App’x). To address these recitations, it appears that the Examiner equates the fluid treatment cartridge 14 of Astle (as described at, for example, Astle paragraphs 51, 53, and 64) to the “water-bearing domestic appliance” which has a “chamber” in claims 13 and 21. Ans. 6–8; Final Act. 9–10.

If we find, provisionally, that either the washing machine or detergent dispenser of Astle is the “water-bearing domestic appliance” and/or the “chamber,” the Examiner has not adequately identified where Astle teaches “recording the specific volumes of water being supplied to the treatment chamber” and “aggregating . . . during a lifetime” as recited by claim 13 or the parallel recitations of claim 21. If we instead find that the fluid treatment cartridge 14 of Astle is the “water-bearing domestic appliance” and/or the “chamber,” the Examiner has not adequately identified where Astle teaches “supplying . . . specific volumes of water . . . for each wash program or program step being performed” to this chamber. Accordingly, the Examiner has not identified a single of embodiment of Astle which teaches all recitations of claim 13 or claim 21 as those recitations are arranged in the claim. We therefore do not sustain the Examiner’s rejection of claims 13–16, 18, 20, 21, 23, 24, 26, 35, 36, and 40 as anticipated by Astle.

The Examiner’s findings regarding Nogi, Johnson, and Jerg as compared to claims 41 and 42 do not cure the error addressed above. Final Act. 7. We therefore do not sustain the Examiner’s rejection of claims 41 and 42 as obvious over Astle in view of Nogi, Johnson, and Jerg.

Rejections 2 and 3. The Examiner rejects claims 13–17, 19–21, 23–26, 35, and 40 as anticipated by Hettenhausen. Final Act. 5. The Examiner also rejects claims 36, 41, and 42 as obvious over Hettenhausen in view of Santarossa, Nogi, Johnson, and Jerg. *Id.* at 6.

Appellant argues that Hettenhausen fails to teach aggregation of the volume of “*all water* supplied to the treatment chamber over the appliance’s lifetime.” Appeal Br. 13. Appellant argues that, instead, Hettenhausen only discloses measurement of water from the softener. *Id.*

The Examiner findings regarding the Hettenhausen reference are based upon a machine translation obtained from the European Patent Office web site. Final Act. 5. Because this machine translation is the translation of record, we also rely upon this translation in assessing the Examiner's rejections.

The Examiner finds that page 3 of the translation teaches recording and aggregating water volumes supplied to the treatment chamber. Ans. 9. But based on the present record including the machine translation of Hettenhausen available to us, a preponderance of evidence does not support the Examiner's position. Rather, the present record is ambiguous as to whether or not Hettenhausen teaches "aggregating a total water volume . . . including all water supplied to the treatment chamber . . . during a lifetime of a water-bearing domestic appliance," and substantial evidence in the present record does not support the Examiner's finding. If the "appliance" as recited in the claims is the dishwasher, the Examiner's explanation as to how total water volume is measured over the lifetime of the dishwasher is unclear. We therefore do not sustain the Examiner's rejection of claims 13–17, 19–21, 23–26, 35, and 40 as anticipated by Hettenhausen.

The Examiner's explanation of Santarossa, Nogi, Johnson, and Jerg as compared to claims 36, 41, and 42 does not establish that the combination of references cure the error addressed above. Final Act. at 6–7. We therefore do not sustain the Examiner's rejection of claims 36, 41, and 42 as obvious over Hettenhausen in view of Santarossa, Nogi, Johnson, and Jerg.

DECISION

For the above reasons, we reverse the Examiner's rejection of claims 13–21, 23–26, 35, 36, and 40–42.

REVERSED